IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.89 OF 2006

Smt.Nanubai Dhondiram Nehatrao ...Applicant

Versus

Smt.Sangita Dhondiram Nehatrao & Ors...Respondents

.....

Mr.Sandeep S.Salunkhe for Applicant.

None for Respondents.

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CORAM: A.M.KHANWILKAR, J.

JUNE 7, 2006.

P.C.

1. Heard Counsel for the Applicant.

2. Grievance made before this Court is that the Applicant had appeared in the proceedings before the Trial Court, but was not given fair opportunity. To substantiate this position, reliance is placed on the fact noted in the order of the Appellate Court, which is impugned in this Revision to the effect that after publication of notice in local Marathi Newspaper, inviting objections, Applicant had in fact appeared before the Trial Court before issuance of the subject succession certificate. The fact that the Applicant

had appeared before the succession certificate was issued in favour of the Respondent but the Trial Court declined to give opportunity of cross-examination, is not clearly stated by the Appellate Court. On the other hand, the Trial Court in its order, in Paragraph 4, has noted that after the issuance of notice inviting objections, no one filed any objection, which statement of fact presupposes that no appearance was filed by any one.

3. As there is confusion about the fact stated in the order of the Appellate Court, on the basis of which, grievance is made before this Court regarding the correctness of the fact noted by the Trial Court, the appropriate course for the Applicant, to my mind, is to move the Trial Court for necessary clarification. If the Trial Court was to record a clear finding that the Applicant had appeared in the proceedings before issuance of succession certificate, that would be a different matter, only when, the grievance now canvassed before this Court can be looked into. This course is also necessary in view of the decision of the Apex Court in **AIR 1982 SC 1249 in the case of R.S.Nayak vs. A.R.Antulay.**

4. Accordingly, this Revision is disposed of with liberty to the Applicant to approach the Trial Court for clarification of the fact noted in Paragraph 4 of the order and as mentioned earlier, only if the Trial Court was to record that the Applicant had appeared before it in the proceedings before issuance of succession certificate, the contention raised before this Court in the present proceedings can be considered. All questions in that behalf are left open.

A.M.KHANWILKAR, J.